

EXHIBIT 86

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE PHILLIES, a Pennsylvania)
limited partnership,)
)
Plaintiff,)
) Civil Action No.
vs.) 19-7239
)
HARRISON/ERICKSON,)
INCORPORATED, a New York)
corporation, HARRISON ERICKSON,)
a partnership, and WAYDE)
HARRISON and BONNIE ERICKSON,)
)
Defendants.)
-----)

****CONFIDENTIAL****

VIDEOTAPED-TELEPHONIC DEPOSITION

TAKEN REMOTELY VIA

VIDEOCONFERENCE AND TELECONFERENCE

OF

DAVID RAYMOND

Federal Rule of Civil Procedure 30(b)(6)

Thursday, May 7, 2020

Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
JOB NO. 179894

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<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 May 7, 2020</p> <p>6 4:25 p.m.</p> <p>7</p> <p>8 CONFIDENTIAL videotaped deposition</p> <p>9 of DAVID RAYMOND, pursuant to Federal</p> <p>10 Rule of Civil Procedure 30(b)(6), before</p> <p>11 Francis X. Frederick, a Certified</p> <p>12 Shorthand Reporter, Registered Merit</p> <p>13 Reporter and Notary Public of the States</p> <p>14 of New York and New Jersey.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 (All Counsel and Participants</p> <p>5 present via videoconference and</p> <p>6 teleconference in compliance with</p> <p>7 COVID-1 restrictions.)</p> <p>8</p> <p>9 DUANE MORRIS</p> <p>10 Attorneys for Plaintiff</p> <p>11 30 South 17th Street</p> <p>12 Philadelphia, Pennsylvania 19103</p> <p>13 BY: TYLER MARANDOLA, ESQ.</p> <p>14 DAVID WOLFSOHN, ESQ.</p> <p>15</p> <p>16 MITCHELL SILBERBERG & KNUPP</p> <p>17 437 Madison Avenue</p> <p>18 New York, New York 10022</p> <p>19 BY: PAUL MONTCLARE, ESQ.</p> <p>20 LEO LICHTMAN, ESQ.</p> <p>21 - and -</p> <p>22 MITCHELL SILBERBERG & KNUPP</p> <p>23 1818 N Street N.W.</p> <p>24 Washington, DC 20036</p> <p>25 BY: MATTHEW WILLIAMS, ESQ.</p>
<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S: (Cont'd.)</p> <p>3</p> <p>4 ALSO PRESENT:</p> <p>5 PHIL RIZZUTI, Videographer</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS - CONFIDENTIAL</p> <p>2 THE VIDEOGRAPHER: Good afternoon.</p> <p>3 My name -- one second.</p> <p>4 My name is Phil Rizzuti. I am the</p> <p>5 legal videographer in association with</p> <p>6 TSG Reporting, Inc. Due to the severity</p> <p>7 of the COVID-19 and following the</p> <p>8 practice of social distancing I will not</p> <p>9 be in the same room with the witness.</p> <p>10 Instead, I will record this videotaped</p> <p>11 deposition remotely. The reporter,</p> <p>12 Francis Frederick, also will not be in</p> <p>13 the same room and will swear the witness</p> <p>14 remotely.</p> <p>15 Do all parties stipulate to the</p> <p>16 validity of this video recording and</p> <p>17 remote swearing and that it will be</p> <p>18 admissible in the courtroom as if it had</p> <p>19 been taken following Rule 30 of the</p> <p>20 Federal Rules of Civil Procedure and the</p> <p>21 state's rules where this case is</p> <p>22 pending?</p> <p>23 MR. MONTCLARE: So stipulated on</p> <p>24 behalf of the defense.</p> <p>25 MR. MARANDOLA: Tyler Marandola</p>

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<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS - CONFIDENTIAL</p> <p>2 for The Phillies. We agree.</p> <p>3 THE VIDEOGRAPHER: Okay. This is</p> <p>4 the start of media labeled number one of</p> <p>5 video recorded of Mr. David Raymond in</p> <p>6 the matter of The Phillies, a</p> <p>7 Pennsylvania limited partnership versus</p> <p>8 Harrison/Erickson, Inc., a New York</p> <p>9 corporation, et al. in the United States</p> <p>10 District Court for the Southern District</p> <p>11 of New York. Case number 1-19-cv-07239</p> <p>12 (VM).</p> <p>13 My name is -- this deposition is</p> <p>14 being held on May 7th, 2020 at</p> <p>15 approximately 4:27 p.m. My name is Phil</p> <p>16 Rizzuti. I am the legal video</p> <p>17 specialist from TSG Reporting, Inc. The</p> <p>18 court reporter is Francis Frederick in</p> <p>19 association with TSG Reporting.</p> <p>20 Counsel, please introduce</p> <p>21 yourselves.</p> <p>22 MR. MONTCLARE: Yes. This is Paul</p> <p>23 Montclare on behalf of the defense.</p> <p>24 MR. WILLIAMS: Matthew Williams on</p> <p>25 behalf of the Defendants.</p>	<p style="text-align: right;">Page 7</p> <p>1 PROCEEDINGS - CONFIDENTIAL</p> <p>2 MR. MARANDOLA: Tyler Marandola on</p> <p>3 behalf of Plaintiff, The Phillies.</p> <p>4 THE VIDEOGRAPHER: Will the court</p> <p>5 reporter please swear in the witness.</p> <p>6 (Witness sworn.)</p> <p>7 THE VIDEOGRAPHER: Could you turn</p> <p>8 up the volume at all, Mr. Raymond, if</p> <p>9 you can.</p> <p>10 MR. MONTCLARE: Yeah, I'm having a</p> <p>11 real difficulty hearing you.</p> <p>12 THE WITNESS: Okay. Is that</p> <p>13 better there? I mean, it's not my</p> <p>14 volume, per se. It might be the</p> <p>15 distance of the phone.</p> <p>16 THE VIDEOGRAPHER: This is the</p> <p>17 videographer. You're coming in loud and</p> <p>18 clear now so if you could just keep that</p> <p>19 same configuration.</p> <p>20 THE WITNESS: Okay. Great.</p> <p>21 MR. MARANDOLA: Paul, just at the</p> <p>22 outset, Mr. Raymond is the designee of</p> <p>23 The Phillies on topic -- or a portion of</p> <p>24 topic 7(a) from your March 10th e-mail,</p> <p>25 the creative contributions by, for, or</p>
<p style="text-align: right;">Page 8</p> <p>1 PROCEEDINGS - CONFIDENTIAL</p> <p>2 on behalf of The Phillies to the</p> <p>3 Phanatic character.</p> <p>4 MR. MONTCLARE: I agree. And we</p> <p>5 will mark that e-mail chain into the</p> <p>6 record so we have it for everybody to</p> <p>7 refer to.</p> <p>8 I would say also that this is in</p> <p>9 response to a Rule 30(b)(6) demand and</p> <p>10 you have produced this witness as a</p> <p>11 knowledgeable person on behalf of The</p> <p>12 Phillies even though he is not an</p> <p>13 employee; is that correct?</p> <p>14 MR. MARANDOLA: That's correct.</p> <p>15 And I don't know if you're going to mark</p> <p>16 the e-mail chain in this deposition as</p> <p>17 well but just to be clear, topic 7(a)</p> <p>18 covered both the costume and the</p> <p>19 character. Mr. Raymond's testimony is</p> <p>20 limited to the character element of</p> <p>21 that.</p> <p>22 MR. MONTCLARE: I understand.</p> <p>23 Understood.</p> <p>24 I'm not sure what we marked this</p> <p>25 as, which exhibit number it is. Is it</p>	<p style="text-align: right;">Page 9</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 115? Leo, do you know what number it</p> <p>3 is?</p> <p>4 MR. LICHTMAN: Yes, this is Leo.</p> <p>5 D-115 it was previously marked as.</p> <p>6 MR. MONTCLARE: Okay. All right.</p> <p>7 So we're ready to get rolling.</p> <p>8 * * *</p> <p>9 D A V I D R A Y M O N D, called as a</p> <p>10 witness, having been duly sworn by a</p> <p>11 Notary Public, was examined and</p> <p>12 testified as follows:</p> <p>13 EXAMINATION BY</p> <p>14 MR. MONTCLARE:</p> <p>15 Q. Mr. Raymond, we've met before.</p> <p>16 You had your deposition taken in this case; is</p> <p>17 that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And at that time you were not</p> <p>20 acting as a designee of The Phillies but you</p> <p>21 were acting as an individual who was</p> <p>22 testifying in accordance with the subpoena; is</p> <p>23 that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Did you review your prior</p>

<p style="text-align: right;">Page 14</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 passionate Philadelphia sports fan,</p> <p>3 specifically the Phillies. He's kind of a</p> <p>4 perpetual ten-year-old boy. ADD. He's</p> <p>5 frenetic. And the personality that I was</p> <p>6 involved in creating was a mash-up of favorite</p> <p>7 cartoon characters and a love of slapstick</p> <p>8 humor and his ability to connect through using</p> <p>9 those -- you know, those focuses and those</p> <p>10 pieces of his personality to connect to</p> <p>11 Philadelphia fans.</p> <p>12 He was -- of course, like the</p> <p>13 fans, he wore his emotions on his sleeve and</p> <p>14 he was up and down with the team. And he was</p> <p>15 entertaining and happy-go-lucky when The</p> <p>16 Phillies were winning. And he was depressed</p> <p>17 and frustrated when The Phillies were losing.</p> <p>18 Q. Okay. Now, I believe that you</p> <p>19 were the first performer inside the Phanatic</p> <p>20 costume, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you first performed on April</p> <p>23 25th, 1978, correct?</p> <p>24 A. Yes.</p> <p>25 Q. How many bits of the character</p>	<p style="text-align: right;">Page 15</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 traits that you just mentioned existed on that</p> <p>3 date?</p> <p>4 A. Well, in the beginning I didn't --</p> <p>5 I did not have more direction than from Bill</p> <p>6 Giles to make sure I was having fun, but I had</p> <p>7 to make sure that it was G-rated fun, so I was</p> <p>8 clear that I was supposed to be -- I can</p> <p>9 exercise my fun and what was fun to me as long</p> <p>10 as it was good for family entertainment.</p> <p>11 And I just went out and really</p> <p>12 focused that first day, the very first day, on</p> <p>13 being as frenetic and fast moving as I could.</p> <p>14 And, you know, the character Daffy Duck was</p> <p>15 very instrumental in developing that frenetic</p> <p>16 movement and personality.</p> <p>17 So I tried to get to as many</p> <p>18 people as I could, hug and kiss them, move on.</p> <p>19 We had -- there was a picnic area in the</p> <p>20 corner of the stadium -- hold on. I</p> <p>21 apologize. My phone is ringing there.</p> <p>22 There's a picnic area --</p> <p>23 Q. Just so we're clear -- I want to</p> <p>24 move on. Just so we're clear, I'm just</p> <p>25 talking about on this first day, April 25th,</p>
<p style="text-align: right;">Page 16</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 1978.</p> <p>3 A. Yes, yes.</p> <p>4 Yeah. So if you could imagine not</p> <p>5 having any direction and needing to go out</p> <p>6 dressed as the Phanatic looked that first day,</p> <p>7 I just pulled from those cartoon characters</p> <p>8 and tried to be frenetic and bouncing around.</p> <p>9 I found that when I tripped and</p> <p>10 fell, not on purpose, everybody laughed. So I</p> <p>11 decided I needed to fall down more.</p> <p>12 So the start of it was all about</p> <p>13 the mash-up of being a Phillies fan, my</p> <p>14 favorite cartoon characters, slapstick humor</p> <p>15 from The Three Stooges. Those were my</p> <p>16 inspirations. And those things developed</p> <p>17 surprisingly quickly over time into a</p> <p>18 fully-formed personality that the Phanatic</p> <p>19 continues to portray today.</p> <p>20 Q. When did that fully-formed</p> <p>21 personality -- when was that completed?</p> <p>22 A. It's hard to put a finger on the</p> <p>23 exact time, but I would say early on in the</p> <p>24 first two or three months that was the</p> <p>25 discovery period. Well into the first season</p>	<p style="text-align: right;">Page 17</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 I would say in August, maybe September it</p> <p>3 became much easier for me as the performer to</p> <p>4 put the costume on and really become that</p> <p>5 personality that I had created with some trial</p> <p>6 and error.</p> <p>7 Q. Okay. So you created this</p> <p>8 personality. And did you ever write down any</p> <p>9 of the traits that you just testified about as</p> <p>10 being part of the character of the Phanatic?</p> <p>11 MR. MARANDOLA: Objection, vague.</p> <p>12 A. Certainly not in the --</p> <p>13 Q. I didn't hear your answer. I</p> <p>14 didn't hear your answer, sir.</p> <p>15 A. Yeah. There was an objection but</p> <p>16 I wanted to make sure that you heard the</p> <p>17 objection.</p> <p>18 Q. I did but it's okay.</p> <p>19 MR. MONTCLARE: Was there an</p> <p>20 instruction not to answer?</p> <p>21 MR. MARANDOLA: The objection was</p> <p>22 because it was vague.</p> <p>23 A. I'm sorry. Ask the question</p> <p>24 again, Mr. Montclare. I'm sorry.</p> <p>25 Q. I'll just have the reporter read</p>

<p style="text-align: right;">Page 50</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 for 16 years after this. Okay? So I'm</p> <p>3 assuming they approved of the guy who made the</p> <p>4 character actually loved and beloved by the</p> <p>5 City of Philadelphia and took something that</p> <p>6 they drew, just drew a drawing up, gave a big</p> <p>7 heap of fur, and then I brought it to life and</p> <p>8 made it a special personality that everybody</p> <p>9 believes to this day to be my credit for</p> <p>10 doing, had nothing to do with Bonnie and Wade.</p> <p>11 They weren't involved in developing the</p> <p>12 personality. They never gave me any</p> <p>13 instruction other than saying don't take</p> <p>14 acting lessons, it will screw you up.</p> <p>15 So I don't have any knowledge of</p> <p>16 this particular clause. But based on what The</p> <p>17 Phillies did I'm assuming that Bonnie and Wade</p> <p>18 approved of the performer that The Phillies</p> <p>19 went and found, the Phillies gave the</p> <p>20 opportunity to show his skill and his talent,</p> <p>21 The Phillies allowed him to find a backup</p> <p>22 performer and help train that backup performer</p> <p>23 and put him in a position to be successful and</p> <p>24 consistently drive this personality that is</p> <p>25 beloved by Philadelphia and has nothing to do</p>	<p style="text-align: right;">Page 51</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 with anything that Bonnie and Wade ever did,</p> <p>3 Mr. Moncreif, ever, other than telling me</p> <p>4 don't take acting lessons, don't do that.</p> <p>5 That will screw you up. You are doing just</p> <p>6 fine. And in Wade's own notes saying that</p> <p>7 David has created this sensitive and wonderful</p> <p>8 character.</p> <p>9 So I don't need to look at this</p> <p>10 document anymore. I don't have any knowledge</p> <p>11 of it. I'm here to tell you what The Phillies</p> <p>12 brought to the party and what Bonnie and Wade</p> <p>13 did not bring. And I'm happy to tell you</p> <p>14 about that.</p> <p>15 Q. To your knowledge, sir, is there</p> <p>16 any agreement that says that The Phillies, as</p> <p>17 the licensee, had the right to select their</p> <p>18 own performer without the consent of the</p> <p>19 licensor, Harrison/Erickson?</p> <p>20 MR. MARANDOLA: Objection.</p> <p>21 Outside the scope of the 30(b)(6)</p> <p>22 notice. Objection, lack of foundation.</p> <p>23 Mr. Raymond, you can answer in</p> <p>24 your personal capacity to the extent you</p> <p>25 know.</p>
<p style="text-align: right;">Page 52</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 A. I just think it's clear that The</p> <p>3 Phillies did the right thing and were</p> <p>4 approved to -- if there was a need to get</p> <p>5 approval, it was approved.</p> <p>6 But I have no knowledge</p> <p>7 specifically of these -- of this information</p> <p>8 until now.</p> <p>9 Q. Do you know if there's any</p> <p>10 document that states -- withdrawn.</p> <p>11 Do you know if there's any</p> <p>12 contract that states that prior to 1984 that</p> <p>13 The Phillies own the copyright to Phanatic</p> <p>14 character?</p> <p>15 MR. MARANDOLA: Objection.</p> <p>16 Outside the scope of the 30(b)(6)</p> <p>17 notice. Objection, lacks of foundation.</p> <p>18 Mr. Raymond, you can answer in</p> <p>19 your personal capacity.</p> <p>20 A. I'm not aware of any of those</p> <p>21 agreements.</p> <p>22 I have a hard stop at 5:30.</p> <p>23 Q. Well, your counsel said they</p> <p>24 wanted to go late so we'll have to come back.</p> <p>25 A. That's fine. I've been clear that</p>	<p style="text-align: right;">Page 53</p> <p>1 D. RAYMOND - CONFIDENTIAL</p> <p>2 I have a call that I need to prep for at 6:00.</p> <p>3 And, you know, I -- and it's about dinner time</p> <p>4 so it's -- I've got to finish by 5:30. I was</p> <p>5 supposed to go on earlier.</p> <p>6 MR. MONTCLARE: Would the court</p> <p>7 reporter --</p> <p>8 MR. WOLFSOHN: I don't know</p> <p>9 what -- Dave, I don't know what Mr.</p> <p>10 Montclare is referring to. We did not</p> <p>11 want to take an hour for lunch and all</p> <p>12 the other breaks.</p> <p>13 MR. MONTCLARE: I wanted to</p> <p>14 adjourn this deposition because I said</p> <p>15 we wouldn't have time.</p> <p>16 Could the court reporter please</p> <p>17 tell me how much time we've been on the</p> <p>18 record.</p> <p>19 THE VIDEOGRAPHER: Hold on one</p> <p>20 second.</p> <p>21 MR. MONTCLARE: From the beginning</p> <p>22 of the day, sir.</p> <p>23 THE VIDEOGRAPHER: The first</p> <p>24 deposition was three hours and 36</p> <p>25 minutes. And we've been on the record</p>